

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
EUREKA DIVISION

NATASHA COTTIER,
Plaintiff,

v.

COMMISSIONER OF SOCIAL
SECURITY,
Defendant.

Case No. [15-cv-04917-NJV](#)

**ORDER OF DISMISSAL FOR FAILURE
TO PROSECUTE**

On September 16, 2016, the court entered an Order (Doc. 14), *sua sponte* granting Plaintiff an additional fourteen (14) days to file a motion for summary judgment and warning Plaintiff that failure to file a motion would result in the dismissal of this action for failure to prosecute. Plaintiff has failed to file a motion or otherwise respond to the court.

Plaintiff filed the Complaint (Doc. 1) seeking judicial review of an administrative law judge (“ALJ”) decision denying Plaintiff’s application for disability benefits under 42 U.S.C. §§ 405(g) and 1383(c)(3). Both parties consented to the jurisdiction of a magistrate judge. (Docs. 6 & 10). Following service, the Commissioner filed an Answer and lodged the administrative transcript. (Docs. 12 & 13). Both the Answer and the transcript were served on Plaintiff in paper form by mail. *See* Cert. of Service (Doc. 12-1 & 13-12). Pursuant to the Social Security Procedural Order (Doc. 14) entered in this case, Plaintiff was required to “serve and file a motion for summary judgment or for remand within thirty days of service of defendant’s answer.” Because more than thirty days had passed since the Commissioner had filed her Answer, and Plaintiff had not filed her motion, the court entered the Order granting Plaintiff an additional 14 days to file her motion. As Plaintiff has disregarded the court’s order, the court finds this matter

1 appropriate for dismissal under Federal Rule of Civil Procedure 41(b).

2 “Pursuant to Federal Rule of Civil Procedure 41(b), the district court may dismiss an action
3 for failure to comply with any order of the court.” *Ferdik v. Bonzelet* 963 F.2d 1258, 1260 (9th
4 Cir. 1992). “In determining whether to dismiss a claim for failure to prosecute or failure to comply
5 with a court order, the Court must weigh the following factors: (1) the public’s interest in
6 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of
7 prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the
8 public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639,
9 642 (9th Cir. 2002) (citing *Ferdik*, 963 F.2d at 1260–61).

10 The court finds that these factors support dismissal. First, “[t]he public’s interest in
11 expeditious resolution of litigation always favors dismissal.” *Yourish v. California Amplifier*, 191
12 F.3d 983, 990 (9th Cir. 1999). Second, the court’s need to manage its docket weighs in favor of
13 dismissal. It is clear Plaintiff has no interest in participating in this matter and the court cannot
14 manage its docket when the prosecuting party will not participate. Third, the risk of prejudice to
15 the defendant generally requires that “a defendant . . . establish that plaintiff’s actions impaired
16 defendant’s ability to proceed to trial or threatened to interfere with the rightful decision of the
17 case.” *Pagtalunan*, 291 F.3d at 642. However, “a presumption of prejudice arises from a
18 plaintiff’s unexplained failure to prosecute.” *Lamina v. Syringa Gen. Hosp.*, 279 F.3d 750, 753
19 (9th Cir. 2002). Plaintiff has not overcome this presumption and, thus, this factor weighs in favor
20 of dismissal. Fourth, there appears no available less drastic alternative. The court has already *sua*
21 *sponte* granted Plaintiff a continuance and warned Plaintiff that failure to file a brief would result
22 in dismissal. Despite that warning Plaintiff has failed to comply with the court’s order. The court
23 finds that there is no available less drastic alternative and this factor weighs in favor of dismissal.
24 The fifth factor weighs against dismissal, because “[p]ublic policy favors disposition of cases on
25 the merits.” *Pagtalunan*, 291 F.3d at 643.

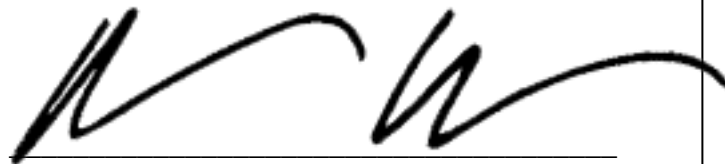
26 Dismissal is appropriate “where at least four factors support dismissal, . . . or where at least
27 three factors ‘strongly’ support dismissal.” *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th
28 Cir. 1998) (quoting *Ferdik*, 963 F.2d at 1263). Here, four out of five factors support dismissal.

1 Accordingly, it is ORDERED that this case is DISMISSED without prejudice for failure to
2 prosecute.

3 A separate judgment shall issue.

4 **IT IS SO ORDERED.**

5 Dated: October 31, 2016

A handwritten signature in black ink, appearing to read 'NANDOR J. VADAS', written over a horizontal line.

NANDOR J. VADAS
United States Magistrate Judge

UNITED STATES DISTRICT COURT
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CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee of the U.S. District Court,
Northern District of California.

That on October 28, 2016, I SERVED a true and correct copy(ies) of the attached, by
placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery
receptacle located in the Clerk's office.

Natasha Cottier
P.O. Box 451
Orleans, CA 95556

Dated: October 31, 2016

Susan Y. Soong
Clerk, United States District Court

By: 
Robert Illman, Law Clerk to the
Honorable NANDOR J. VADAS